## UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE AT NASHVILLE

B.A.P., a minor child by and through	)	
her parent, RICHARD PENKOSKI;	)	
and RICHARD PENKOSKI, as the	)	
parent and legal guardian of B.A.P.,	)	
	)	
Plaintiffs,	)	
	)	
V.	)	Case No. 2:20-cv-00065
	)	
OVERTON COUNTY BOARD OF	)	Chief Judge Waverly D. Crenshaw, Jr
EDUCATION, RICHARD MELTON,	)	Magistrate Judge Alistair E. Newbern
and STEPHEN HENSON,	)	
	)	
Defendants.		

## PLAINTIFFS' MOTION FOR RELIEF UNDER RULE 56(d) AND MOTION FOR EXTENSION OF DISPOSITIVE MOTION DEADLINE

COME NOW PLAINTIFFS, B.A.P., by and through her parent, Richard Penkoski, and Richard Penkoski, (collectively "Plaintiffs"), by and through undersigned counsel and pursuant to Fed. R. Civ. P. 56(d), and hereby move this Court for an Order continuing consideration of the Motion for Summary Judgment filed by Defendants Richard Melton and Stephen Henson ("Defendants") (Doc. 116), pursuant to Rule 56(d) of the Federal Rules of Civil Procedure, as well as other good cause. This motion is supported by the Declaration of Kristin Mosher, counsel of record in this matter ("Mosher Dec."), filed concurrently herewith and incorporated herein by this reference. Plaintiffs also move for an extension of the dispositive motion deadline currently set for October 6.

This motion is made on the grounds that, given the uncertain state of the pleadings and evidence in this case, as well as even who is a proper party, due to the pending Motion to Substitute Proper Party and Dismiss Richard Penkoski (Doc. 89) filed by Plaintiffs, as well as Plaintiffs'

pending discovery Motion for Sanctions Due to Spoliation of Evidence (Doc. 105), Plaintiffs cannot

properly respond in opposition to Defendants' pending Motion for Summary Judgment since the

Motion for Sanctions requests relief that, if granted, would actually moot Defendants' Motion, and

alter the state of the Pleadings and/or evidence in the case.

For the same reasons, Plaintiffs would move this Court to extend the dispositive Motion

deadline, currently set for October 6, 2023 (Doc. 87). Therefore, Plaintiffs respectfully request that

this Court defer consideration of said Motion for Summary Judgment until the pending Motion to

Dismiss/Substitute Proper Party and the pending discovery motion has been adjudicated.

A memorandum of law in support further explaining the facts behind this Motion is filed

contemporaneously hereto.

CONCLUSION

For all these reasons, Plaintiffs would ask this Honorable Court to grant this Motion, and stay

the time for filing a response to Defendants' Motion for Summary Judgment until such time as the

Court can reach adjudication of the pending Motion to Dismiss. Plaintiffs further ask that the

dispositive motion deadline be extended until Plaintiffs' two pending motions can be resolved.

Respectfully submitted,

/s/ Kristin Fecteau Mosher

Kristin Fecteau Mosher, Esq.

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Co-counsel for Plaintiff

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## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on September 26, 2023, a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's electronic filing system.

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This <u>26<sup>th</sup></u> day of September, 2023.

/s Kristin Mosher
Kristin Mosher